IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7282 OF 2006.

1. Rajpat Ramsundar Vishwakarma.
2. Smt.Bharti Surajpal Kurmi.
3. Rajanna Mutukari.
4. Shriram Ramdhar Yadav.
5. Vishwanath Ramchandra Bhandhiwadekar.
6. Smt.Sulochana Dhondu More.
7. Smt.Pushpa Ramiishan Nai.
8. Vijay Bindra Gaud,
9. Smt.Savita Kishan Bhoir.
10. Munshiram Kadedin Gupta.
11. Shivraj Yadav.
12. Murari Achhutanand Pandey.
13. Harjivanbhai Chunnilal Darji.
14. Damji Govind Chavan.
15. Smt.Shalini Bhikaji More.
16. Pargji Lalji Vaghela.
17. Bhagvanji Mavji Rathode
    All adults, Indian Inhabitants,
    residing on Plot bearing CTS Nos.
    38, 38/1 to 3, 40, 40/1 to 129
    Koldongri, Sahar Road, Andheri
    (East), Mumbai 400 069. ... Petitioners.

Versus.

1. The State of Maharashtra.
   (At the instance of the Deputy
   Collector (Enc/Eviction) & C.A.
   Bandra, Mumbai 400 051.

2. M/s.Global Buildcon Pvt.Ltd.,
   having office at Gujrat Clay
   Mills Compound, Quresh Marg,
   Opp: Bantar Bhavan, Kurla
   (East), Mumbai 400 024.

3. The Chairman/Secretary,
   Shri Tirupati Balaji Coop. Hsg.
   Society, situated at CTS No.38,
   38/1 to 3, 40, 40/1 to 129, Village
   Vile parle, Sahar Road, Kondongri,
   Andheri East, Mumbai 400 069. ... Respondents.

Shri H.S.Anand for the Petitioners.

Ms.Vaidhehi Mhaispurkar, A.G.P. for Respondent No.1.

Shri G.S.Godbole i/by M/s.Warerkar and Warerkar for the Respondent No.2.

CORAM : ABHAY S.OKA, J.

DATED : 16th April, 2007.

ORAL JUDGMENT.:

1. Submissions of the learned Advocates appearing for the parties were heard on the last date. The challenge in this petition under Article 227 of the Constitution of India is to the order dated 26th June 2006 passed by the Competent Authority as well as order dated 28th July 2006 passed in Appeal by the Administrator and Commissioner, Konkan Division. It will be necessary to refer to the facts of the case in brief.

2. The Petitioners are claiming to be in possession of certain structures on a plot of land more particularly described in paragraph 1 of the petition. The Petitioners claim that they are residing in the structures on the said plot for several years and in any event prior to 1st January 1995 and therefore they are entitled to permanent accommodation in a slum rehabilitation scheme.

3. The Petitioners have relied upon the order dated 25th October 2006 passed by the Division Bench of this Court in Writ Petition No.6484 of 2005. By the said

order the Division Bench directed that the objections raised by the Petitioners and other persons in the form of an Application will be disposed of in terms of the order dated 22nd June 2005.

4. The Deputy Collector (Encroachment) claiming to be a Competent Authority under the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 (hereinafter referred to as "the said Act of 1971") issued notice to the Petitioners and others on 26th June 2006. In the said notice it was observed that the Petitioners were held eligible for grant of a permanent accommodation in the Slum Redevelopment Scheme, which was being implemented by the 2nd Respondent at the instance of the 3rd Respondent. By the said notice, the Petitioners were called upon to vacate the existing premises held by the Petitioners and to hand over the same to the 2nd Respondent. By the said notice, the Petitioners were informed that if they fail to hand over possession, action under section 33 of the said Act of 1971 will be taken. The Petitioners replied to the said notice by raising various contentions. On 28th July 2006, an order was passed in exercise of powers under sections 33 and 38 of the said Act of 1971 by the Deputy Collector directing eviction of the Petitioners. An Appeal was preferred by the Petitioners before the Commissioner, Konkan Division, Mumbai, and the

Administrator under section 35 of the said Act of 1971. The said Appeal was dismissed by order dated 27th October 2006.

5. The learned Counsel appearing for the Petitioner has taken me through the various provisions of the said Act of 1971 and the relevant provisions of the Development Control Regulations of the Mumbai Municipal Corporation. He submitted that the property on which the structures of the Petitioners are situated is already declared as a slum area under the provisions of the said Act of 1971. By referring to the various provisions of the said Act of 1971, he submitted that once the area is declared as a slum under section 4 of the said Act of 1971, it is not necessary to make any specific declaration under section 3C of the said Act of 1971 declaring the area as a slum rehabilitation area. He submitted that as the area on which the structures were situated was declared as a slum rehabilitation area under section 3C of the said Act of 1971, the Deputy Collector could not have acted as the competent authority and by virtue of the amendment to the said Act of 1971, only the Chief Executive Officer of the Slum Rehabilitation Authority could have acted as the competent authority. He has invited my attention to the various decisions of this Court in support of this submission. He submitted that as the Deputy Collector

could not have acted as a competent authority, the order of eviction is bad-in-law. He submitted that he is not addressing this court on the legality of the slum rehabilitation scheme as different proceedings are pending in that behalf. He submitted that he is confining his challenge in this petition to the illegality of the order passed by the Deputy Collector.

6. The learned Counsel appearing for the 2nd Respondent supported the impugned order by pointing out that there is no declaration made under section 3C of the said Act of 1971. He also invited my attention to various decisions of this Court.

7. The limited issue which is to be decided in this petition is whether the Deputy Collector (Encroachment) is the Competent Authority to exercise powers under sections 33 and 38 of the said Act of 1971. I am not dealing with any other issues involved as regards implementation of the Slum Rehabilitation Scheme. It is not disputed before me that there is no specific declaration made under section 3C of the said Act of 1971 in respect of the area on which the structures allegedly occupied by the Petitioners are situated. I have perused the amendments made to the said Act of 1971 by Maharashtra Act Nos.4 of 1976 and 6 of 1997.

8. The first question which is to be decided is whether there is any necessity of a declaration under sub-section (1) of section 3C of the said Act of 1971 in respect of an area which is declared as a slum under section 4(1) of the said Act of 1971. The contention raised before me by the learned Counsel for the Petitioner is that once an area is declared as a slum area by virtue of notification under section 4(1) of the said Act of 1971, it becomes a slum rehabilitation area within the meaning of sub-section (1) of section 3C of the said Act of 1971.

9. In the present case we are dealing with a scheme for slum rehabilitation which is governed by Regulation 33(10) of the Development Control Regulations for the city of Mumbai. My attention has been attention to a decision of the Division Bench of this Court in the case of Om Sai Darshan Cooperative Housing Society Ltd. and another v/s. State of Maharashtra and others (Writ Petition No.910 of 2005) decided by a Division Bench of this Court to which I was a party. The first and second questions for consideration framed by the Division Bench read thus:

(i) Whether the issuance of notification under section 3C(1) of the Slum Act is a condition precedent for sanction of slum redevelopment

scheme governed by D.C.Regulation 33(10)?

(ii) What is the meaning of the slum rehabilitation area for the purpose of D.C. Regulation 33(10)?

In paragraph 20 of the said decision, the Division Bench has observed thus:

> "20. On plain reading of the Annexure to Regulation 33(10) it is obvious that for sanction of a scheme governed by the said Regulation in respect of a parcel of land, it is not necessary to have a declaration of the particular parcel of land as a slum rehabilitation area in exercise of power under section 3C(1) of the Slum Act. The Slum Rehabilitation Scheme can be sanctioned in respect of a slum as defined in clause II of Annexure to Regulation 33(10). Under the said Annexure there can be a scheme for a viable stretch of pavement also. The learned Single Judge deciding Ramkali's case was not concerned with a scheme under D.C.Regulation No.33(10). The proposition laid down by him will have to be read as one confined to the situated before him. Question No.1 is

> therefore answered in the negative. The question No.2 has been also answered in the foregoing paragraphs."

In view of what has been held by the Division Bench, it is very difficult to accept the proposition canvassed by the learned Counsel for the Petitioner. Apart from this fact, section 3C(1) of the said Act of 1971 requires a procedure to be followed before an order is made for declaration of an area as a Slum Rehabilitation Area. The Chief Executive Officer has to record a satisfaction regarding existence of circumstances justifying the declaration as a slum rehabilitation area. The order passed by the Chief Executive Officer is required to be published in the official gazette. Admittedly no such order has been passed in the present case.

10. Considering the Scheme of the said Act of 1971 it is impossible to accept the submission that once a particular area is declared as a slum under section 4(1) of the said Act of 1971, it automatically becomes a slum rehabilitation area under sub-section (1) of section 3C of the said Act of 1971. In view of what is held by the Division Bench, for implementation of a scheme under Regulation 33(10), it is not necessary that the area is declared as a slum rehabilitation area under section 3C. It must be noted here that section 3C will have to be

read in the context of section 3B which deals with the general slum rehabilitation scheme for the area specified under sub-section (1) of section 3A for rehabilitation of slums and hutment colonies in such areas.

11. The second question which is to be decided is if the area in question is not declared specifically as a slum rehabilitation area under sub-section (1) of section 3C of the said Act of 1971, whether the Chief Executive Officer is the competent authority. A perusal of the amendment made by Maharashtra Act 6 of 1997 shows that in case of an area which is declared as a slum rehabilitation area under sub-section (1) of section 3C of the said Act of 1971, the words "Competent Authority" stand substituted by the words "Chief Executive Officer". Therefore, it is only when a particular area is declared as a slum rehabilitation area under sub-section (1) of section 3C of the said Act of 1971, the Competent Authority under sections 33 and 38 of the said Act of 1971 will be the Chief Executive Officer. In this view of the matter, no fault can be found with the power exercised by the Deputy Collector (Encroachment) in his capacity as the competent authority. The order of eviction has been passed on the ground that the concerned Petitioners have been held eligible for allotment of tenements in the

rehabilitation scheme. As pointed earlier, this Court is not dealing with the legality and/or validity of the scheme which is being implemented. Considering the limited submissions made before this Court, I find no merit in the contentions raised by the learned Counsel appearing for the Petitioners.

12. Therefore, the writ petition is rejected.

13. At this stage, the learned Counsel for the Petitioners prays that the ad-interim relief granted by this Court be continued for a reasonable time. Shri Godbole appearing for the 2nd Respondent opposes the said prayer by pointing out that the Petitioners are held eligible for securing permanent accommodation and the 2nd Respondent can make the accommodation available immediately. He states that 17 flats are ready for the benefit of the Petitioners.

14. The Petitioners desire to challenge this order and therefore, they are seeking continuation of the interim relief. Considering the large number of orders passed by this Court, it is not possible to immediately make a copy of the order available to the parties and therefore, ad-interim relief granted by this Court earlier will continue to operate till 3rd May 2007.

Judge.